

1 **FERMAN W. SIMS, ESQ.**
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9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**
11 **SAN FRANCISCO DIVISION**

12 STEPHEN MITCHELL,

CASE NO. C 07-5112 CW

13 Plaintiff,

14 vs.

DECLARATION OF STEPHEN

MITCHELL IN SUPPORT OF

16 DR. HAROLD NEMETZ, OPEN DOOR

APPLICATION FOR LEAVE TO FILE

17 COMMUNITY HEALTH CENTER, U.S.

MOTION FOR RECONSIDERATION

18 DEPARTMENT OF HEALTH & HUMAN

19 SERVICES, and DOES 1-20 inclusive,

20 Defendants.

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22
23 I, STEPHEN MITCHELL declare:

- 24 1. I am the plaintiff in the above-captioned matter and the facts set forth herein are of
25 my own personal knowledge or stated on information and belief, which I believe to
26 be true.
- 27 2. My attorney met with me in his office to discuss defendant's motion to dismiss and provided
28 me with copies of said pleading. I was informed that a request would be made to the court to

1 appear telephonically. I was also advised that I could be present for the hearing but was not
2 to talk during said hearing unless asked to speak by the court.

3 3. I was informed orally and in writing that I could be present for said hearing. I informed my
4 attorney that I would not attend in that driving to his office and sitting for any lengthy time
5 causes pain and discomfort as I am 100% disabled through Social Security.

6 4. Immediately after the Court hearing I was informed by telephone from Mr. Sims that the
7 court granted the motion to dismiss. I was also advised once his office received the court
8 Order, his secretary would call to schedule an appointment to discuss this matter with me.

9 5. I met with Mr. Sims the following week. He reviewed the court procedure and arguments
10 presented. I informed Mr. Sims that in my opinion Dr. Nemetz and Dr. Row had conspired
11 and delayed in filing the action by intentionally not producing medical records. Mr. Sims
12 questioned my reasoning for making said statement.

13 6. I then informed Mr. Sims that I personally contacted Dr. Nemetz's office on at least three (3)
14 occasions, the first occasion shortly after my dental appointment after he extracted my tooth
15 and spoke to Dr. Nemetz personally by telephone. At that time I told him that I was of the
16 opinion he removed the wrong tooth, which he denied. He offered to pull the tooth that I was
17 complaining of and Dr. Nemetz was informed "I rather give my dog a pair of pliers and let
18 him have a crack at it". I contacted his office on two other occasions in person and spoke
19 with office staff requesting my dental records. I told the staff that I had a right to receive a
20 copy of my dental records at that time.

21 7. I was referred to Dr. Arshi by Mr. Sims, she gave me an examination and referred to Dr. Row
22 for a vertical fracture tooth extraction. During my first visit with Dr. Row he never
23 mentioned that he knew Dr. Nemetz. He mentioned that he had "heard of him and that he is
24 an excellent dentist". Dr. Row extracted the fractured tooth at that visit. I asked him for a
25 evaluation of the cost involved for a corrective procedure to install a prosthetic device to
26 replace the wrongfully extracted tooth. I was informed at that time approximately
27 \$18,000.00 for corrective procedure.

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- 1 8. I also informed Mr. Sims in this meeting that at a later date when I met with Dr. Row to
2 obtain a written estimate I was informed by him that he personally received referrals from
3 Dr. Nemetz and that I should fire my attorney and settle the case with him. Dr. Row
4 suggested a \$12,000.00 estimate for corrective dental procedures which I understood that to
5 mean he would provide his services at less expense. After this discussion with Dr. Row, I
6 never trusted him. I also informed Mr. Sims during this meeting that I requested my dental
7 record from Dr. Row on two occasions and was informed that they were in storage. I never
8 receive my dental records from Dr. Row or Dr. Nemetz as requested by me personally, even
9 though I informed them that I was entitled to a copy of my records.
- 10 9. The Dental Board took approximately ten (10) months to provide their report. It is my
11 belief that Dr. Nemetz was not responsive to their request and the ten (10) month period was
12 not delayed that long due to lack of employee staff. They should provide all written requests
13 by them to Dr. Nemetz for his records and telephone records, if any, of oral requests made
14 for my dental records from Dr. Nemetz's office.
- 15 10. Mr. Sims informed me that he had requested the medical records from both dentists by
16 submitting the Authorization for Release of Medical Records signed by myself at the time he
17 was retained; however, none were ever received from Dr. Nemetz or Dr. Row.
- 18 11. The only written official documentation to inform that Dr. Nemetz pulled the wrong tooth
19 was upon receipt of the written letter from the Dental Board dated June 27, 2006, ten (10)
20 months from the date they accepted this assignment.
- 21 12. It is my belief that Dr. Row and Dr. Nemetz discussed my case against him and that they
22 both delayed the production of my dental records from both offices to conceal actual
23 recorded documentation of Dr. Nemetz negligent conduct.

24 I declare under penalty of perjury under the laws of the State of California that the
25 foregoing is true and correct.

26 Dated: March 21, 2008

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28 STEPHEN MITCHELL